

**BEFORE THE  
MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

**In the Matter of the Accusation  
Against:**

**LIONEL SIDNEY FOSTER, JR., M.D.**

**Case No. 800-2015-018816**

**Physician's and Surgeon's  
Certificate No. G60284**

**Respondent**

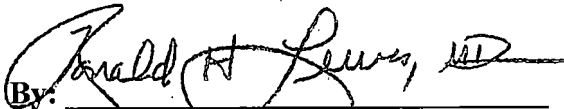
**DECISION**

**The attached Stipulated Settlement and Disciplinary Order is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.**

**This Decision shall become effective at 5:00 p.m. on May 31, 2019.**

**IT IS SO ORDERED May 3, 2019.**

**MEDICAL BOARD OF CALIFORNIA**

By:   
\_\_\_\_\_  
**Ronald H. Lewis, M.D., Chair  
Panel A**

1 XAVIER BECERRA  
Attorney General of California  
2 ALEXANDRA M. ALVAREZ  
Supervising Deputy Attorney General  
3 CHRISTINE A. RHEE  
Deputy Attorney General  
4 State Bar No. 295656  
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5 San Diego, CA 92101  
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6 San Diego, CA 92186-5266  
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8 *Attorneys for Complainant*

9  
10 **BEFORE THE**  
**MEDICAL BOARD OF CALIFORNIA**  
11 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**  
12

13 In the Matter of the Accusation Against:

Case No. 800-2015-018816

14 **LIONEL SIDNEY FOSTER, JR., M.D.**  
**135 RIZAL DRIVE**  
15 **HILLSBOROUGH, CA 94010**

OAH No. 2018101080

16 **Physician's and Surgeon's Certificate**  
**No. G60284,**

**STIPULATED SETTLEMENT AND**  
**DISCIPLINARY ORDER**

17  
18 Respondent.

19  
20 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-  
21 entitled proceedings that the following matters are true:

22 **PARTIES**

23 1. Kimberly Kirchmeyer (Complainant) is the Executive Director of the Medical Board  
24 of California (Board). She brought this action solely in her official capacity and is represented in  
25 this matter by Xavier Becerra, Attorney General of the State of California, by Christine A. Rhee,  
26 Deputy Attorney General.

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2. Respondent Lionel Sidney Foster, Jr., M.D. (Respondent), is represented in this proceeding by attorney Shannon V. Baker, Esq., whose address is: 765 University Avenue, Sacramento, CA 95825.

3. On or about June 8, 1987, the Board issued Physician's and Surgeon's Certificate No. G60284 to Lionel Sidney Foster, Jr., M.D. (Respondent). Physician's and Surgeon's Certificate No. G60284 was in full force and effect at all times relevant to the charges brought in Accusation No. 800-2015-018816, and will expire on July 31, 2020, unless renewed.

## JURISDICTION

4. Accusation No. 800-2015-018816 was filed before the Board, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on April 13, 2018. Respondent timely filed his Notice of Defense contesting the Accusation.

5. A copy of Accusation No. 800-2015-018816 is attached as Exhibit A and incorporated herein by reference.

## ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 800-2015-018816. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

7. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth, above.

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1 CULPABILITY

2 9. Respondent understands and agrees that the charges and allegations in Accusation  
3 No. 800-2015-018816, if proven at hearing, constitute cause for imposing discipline on his  
4 Physician's and Surgeon's Certificate.

5 10. For the purpose of resolving the Accusation without the expense and uncertainty of  
6 further proceedings, Respondent does not contest that, at an administrative hearing, Complainant  
7 could establish a *prima facie* case with respect to paragraphs 12 and 14 of Accusation No. 800-  
8 2015-018816, and that he has thereby subjected his Physician's and Surgeon's Certificate No.  
9 G60284 to disciplinary action. Respondent further agrees to be bound by the Board's imposition  
10 of discipline as set forth in the Disciplinary Order below.

11 CONTINGENCY

12 11. This Stipulated Settlement and Disciplinary Order shall be subject to approval by the  
13 Board. The parties agree that this Stipulated Settlement and Disciplinary Order shall be  
14 submitted to the Board for its consideration in the above-entitled matter and, further, that the  
15 Board shall have a reasonable period of time in which to consider and act on this Stipulated  
16 Settlement and Disciplinary Order after receiving it. By signing this stipulation, Respondent fully  
17 understands and agrees that he may not withdraw his agreement or seek to rescind this stipulation  
18 prior to the time the Board considers and acts upon it.

19 12. The parties agree that this Stipulated Settlement and Disciplinary Order shall be null  
20 and void and not binding upon the parties unless approved and adopted by the Board, except for  
21 this paragraph, which shall remain in full force and effect. Respondent fully understands and  
22 agrees that in deciding whether or not to approve and adopt this Stipulated Settlement and  
23 Disciplinary Order, the Board may receive oral and written communications from its staff and/or  
24 the Attorney General's Office. Communications pursuant to this paragraph shall not disqualify  
25 the Board, any member thereof, and/or any other person from future participation in this or any  
26 other matter affecting or involving Respondent. In the event that the Board does not, in its  
27 discretion, approve and adopt this Stipulated Settlement and Disciplinary Order, with the  
28 exception of this paragraph, it shall not become effective, shall be of no evidentiary value

1 whatsoever, and shall not be relied upon or introduced in any disciplinary action by either party  
2 hereto. Respondent further agrees that should this Stipulated Settlement and Disciplinary Order  
3 be rejected for any reason by the Board, Respondent will assert no claim that the Board, or any  
4 member thereof, was prejudiced by its/his/her review, discussion and/or consideration of this  
5 Stipulated Settlement and Disciplinary Order or of any matter or matters related hereto.

6 **ADDITIONAL PROVISIONS**

7 13. This Stipulated Settlement and Disciplinary Order is intended by the parties herein to  
8 be an integrated writing representing the complete, final, and exclusive embodiment of the  
9 agreements of the parties in the above-entitled matter.

10 14. The parties agree that copies of this Stipulated Settlement and Disciplinary Order,  
11 including copies of the signatures of the parties, may be used in lieu of original documents and  
12 signatures and, further, that such copies shall have the same force and effect as originals.

13 15. In consideration of the foregoing admissions and stipulations, the parties agree that  
14 the Board may, without further notice to or opportunity to be heard by Respondent, issue and  
15 enter the following Disciplinary Order:

16 **DISCIPLINARY ORDER**

17 IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. G60284, issued  
18 to Respondent Lionel Sidney Foster, Jr., M.D., shall be and is hereby Publicly Reprimanded  
19 pursuant to California Business and Professions Code section 2227, subdivision (a)(4). This  
20 Public Reprimand, which is issued in connection with Accusation No. 800-2015-018816, is as  
21 follows:

22 On January 24, 2014, you performed a robotic radical prostatectomy on Patient

23 A. During the procedure, you erroneously incised the prostate urethra rather than the  
24 bladder neck and failed to remove the entire prostate, as more fully described in

25 Accusation No. 800-2015-018816.

26 1. **EDUCATION COURSE**. Within 60 calendar days of the effective date of this  
27 Decision, Respondent shall submit to the Board or its designee for its prior approval educational  
28 program(s) or course(s) which shall not be less than 20 hours. The educational program(s) or

1 course(s) shall be aimed at correcting any areas of deficient practice or knowledge and shall be  
2 Category I certified. The educational program(s) or course(s) shall be at Respondent's expense  
3 and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of  
4 licensure. Following the completion of each course, the Board or its designee may administer an  
5 examination to test Respondent's knowledge of the course. Respondent shall provide proof of  
6 attendance for 20 hours of CME which were in satisfaction of this condition.

7 Any failure to fully comply with this term and condition of the Disciplinary Order shall  
8 constitute unprofessional conduct and will subject Respondent's Physician's and Surgeon's  
9 Certificate to further disciplinary action.

10 ACCEPTANCE

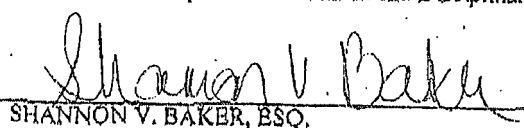
11 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully  
12 discussed it with my attorney, Shannon V. Baker, Esq. I understand the stipulation and the effect  
13 it will have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Settlement  
14 and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the  
15 Decision and Order of the Medical Board of California.

16  
17 DATED: 2/14/2019

  
18 LIONEL SIDNEY FOSTER, JR., M.D.  
Respondent

19 I have read and fully discussed with Respondent Lionel Sidney Foster, Jr., M.D., the terms  
20 and conditions and other matters contained in the above Stipulated Settlement and Disciplinary  
21 Order. I approve its form and content.

22 DATED: 2/15/19

  
23 SHANNON V. BAKER, ESQ.  
Attorney for Respondent

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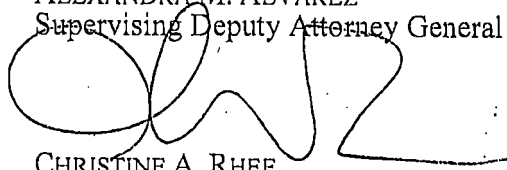
ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Medical Board of California.

Dated: 2/15/19

Respectfully submitted,

XAVIER BECERRA  
Attorney General of California  
ALEXANDRA M. ALVAREZ  
Supervising Deputy Attorney General



CHRISTINE A. RHEE  
Deputy Attorney General  
*Attorneys for Complainant*

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**Exhibit A**

**Accusation No. 800-2015-018816**



1 XAVIER BECERRA  
Attorney General of California  
2 ALEXANDRA M. ALVAREZ  
Supervising Deputy Attorney General  
3 MARA FAUST  
Deputy Attorney General  
4 State Bar No. 111729  
California Department of Justice  
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6 Sacramento, CA 94244-2550  
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Attorneys for Complainant

FILED  
STATE OF CALIFORNIA  
MEDICAL BOARD OF CALIFORNIA  
SACRAMENTO APR 13 2018  
BY Gray West ANALYST

10 BEFORE THE  
11 MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
12 STATE OF CALIFORNIA

13 In the Matter of the Accusation Against:

Case No. 800-2015-018816

14 **Lionel Sidney Foster, Jr., M.D.**  
15 **135 RIZAL DRIVE**  
**HILLSBOROUGH, CA 94010**

**A C C U S A T I O N**

16 **Physician's and Surgeon's Certificate**  
17 **No. G 60284,**

18 Respondent.

19 Complainant alleges:

20 **PARTIES**

21 1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official  
22 capacity as the Executive Director of the Medical Board of California, Department of Consumer  
23 Affairs (Board).

24 2. On or about June 8, 1987, the Medical Board issued Physician's and Surgeon's  
25 Certificate Number G 60284 to Lionel Sidney Foster, Jr., M.D. (Respondent). The Physician's  
26 and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought  
27 herein and will expire on July 31, 2018, unless renewed.

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## JURISDICTION

3. This Accusation is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2227 of the Code provides that a licensee who is found guilty under the Medical Practice Act may have his or her license revoked, suspended for a period not to exceed one year, placed on probation and required to pay the costs of probation monitoring, or such other action taken in relation to discipline as the Board deems proper.

5. Section 2234 of the Code, states:

“The board shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

“(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter.

“(b) Gross negligence.

“(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or omissions. An initial negligent act or omission followed by a separate and distinct departure from the applicable standard of care shall constitute repeated negligent acts.

“(1) An initial negligent diagnosis followed by an act or omission medically appropriate for that negligent diagnosis of the patient shall constitute a single negligent act.

“(2) When the standard of care requires a change in the diagnosis, act, or omission that constitutes the negligent act described in paragraph (1), including, but not limited to, a reevaluation of the diagnosis or a change in treatment, and the licensee's conduct departs from the applicable standard of care, each departure constitutes a separate and distinct breach of the standard of care.

“(d) Incompetence.

“(e) The commission of any act involving dishonesty or corruption which is substantially related to the qualifications, functions, or duties of a physician and surgeon.

“(f) Any action or conduct which would have warranted the denial of a certificate.

1 “(g) The practice of medicine from this state into another state or country without meeting  
2 the legal requirements of that state or country for the practice of medicine. Section 2314 shall not  
3 apply to this subdivision. This subdivision shall become operative upon the implementation of the  
4 proposed registration program described in Section 2052.5.

5 “(h) The repeated failure by a certificate holder, in the absence of good cause, to attend and  
6 participate in an interview by the board. This subdivision shall only apply to a certificate holder  
7 who is the subject of an investigation by the board.”

#### 8 **FIRST CAUSE FOR DISCIPLINE**

##### 9 **(Gross Negligence-Patient A)**

10 6. Respondent Lionel Sidney Foster, Jr., M.D. is subject to disciplinary action under  
11 section 2234, subdivision (b), in that Respondent was grossly negligent in his care and treatment  
12 of Patient A<sup>1</sup>. The circumstances are as follows:

13 7. In or about April 2013, Patient A, a 56-year-old male, was evaluated by Respondent  
14 for urinary tract symptoms as well as having difficulty with erections. At that time, the patient  
15 had a normal PSA test (prostate specific antigen test), an abnormal digital rectal examination and  
16 a normal biopsy. However, in a follow-up appointment in October 2013, Patient A had a repeat  
17 needle biopsy that showed Gleason<sup>2</sup> 3+4 adenocarcinoma. Respondent and Patient A agreed that  
18 the next course of treatment was for Respondent to perform a robotic-assisted laparoscopic radical  
19 prostatectomy with the goal of the complete surgical extirpation of the cancerous prostate.

20 8. On January 24, 2014, Respondent performed that robotic-assisted laparoscopic radical  
21 prostatectomy. Respondent did not describe any obvious untoward events in his operative report.  
22 The pathology report showed an absence of cancer in a very small specimen of 9.73 gms of torn  
23 prostatic tissue fragments. In addition, Patient A suffered from urinary incontinence following  
24 surgery, and was noted to have a minor (clinically insignificant) bladder neck contracture on  
25 cystoscopic examination performed by Respondent. Respondent prescribed Imipramine for  
26

27 <sup>1</sup> This alphabetical identifier is used to protect confidentiality and the patient's name will be disclosed in  
discovery.

28 <sup>2</sup> Gleason scores of 6 or more indicate prostate cancer.

1 Patient A's urinary incontinence, which reportedly helped the patient. Respondent referred  
2 Patient A for consideration of adjuvant radiation treatment for residual prostate cancer.

3 9. Patient A went to UCSF complaining of prolonged urination. A Urologist at UCSF  
4 noted a bladder neck contracture on cystoscopy. On July 30, 2014, a direct vision internal  
5 urethrotomy<sup>3</sup> was done on Patient A's bladder neck contracture and a surgical Hem-o-Lok clip  
6 was seen poking from the bladder trigone<sup>4</sup>, but not through the mucosa (gastric membrane).  
7 Patient A had a bridge of epithelialized tissue between the membranous urethra and bladder neck  
8 with remaining prostatic urethral tissue. In addition, Patient A still had a normal-sized prostate  
9 (30 gms) despite the prior prostatectomy. The presence of the prostate was confirmed on  
10 transrectal ultrasound with an intact prostatic capsule.

11 10. On or about November 24, 2014, a robotic-assisted laparoscopic completion  
12 prostatectomy was performed by Dr. C. The surgical findings from Dr. C. included the presence  
13 of an intact endopelvic fascia (tissue), which was not properly incised during the first surgery. In  
14 addition, the findings also indicated that a significant amount of prostatic and seminal vesical  
15 tissue was found and removed which contained Gleason 3+3 score indicating prostate cancer. It  
16 was further determined that the posterior anastomosis had not been completed during the first  
17 surgery.

18 11. Respondent failed to remove the entire prostate during his radical prostatectomy  
19 performed on Patient A on January 24, 2014. Respondent removed less than half the prostate and  
20 left the seminal vesicles. Respondent committed a surgical error in that Respondent incised the  
21 prostate urethra rather than the bladder neck. The error was not recognized by Respondent as he  
22 left prostate tissue cephalad or proximal to the incised prostate. Respondent left localized cancer  
23 inside the patient's prostate, which necessitated a second surgery.

24 12. Respondent's care and treatment of Patient A was grossly negligent in the following  
25 respects:

26  
27 <sup>3</sup> The operation of cutting a stricture in the urethra.

28 <sup>4</sup> A triangular region of the wall of the bladder that lies between the opening of the two ureters and the urethra.

- a. Respondent's action of incising the prostate rather than the bladder neck;
- b. Respondent's failure to recognize the surgical error of improper incision of the prostate and leaving more than half the prostate and seminal vesicles;
- c. Respondent's failure to remove the localized cancer.

## **SECOND CAUSE FOR DISCIPLINE**

### **(Repeated Negligent Acts-Patient A and B)**

13. Respondent Lionel Sidney Foster, Jr., M.D. is subject to disciplinary action under section 2234, subdivision (c) in that Respondent was repeatedly negligent in his treatment of Patients A and B. The circumstances are as follows:

14. Complainant re-alleges paragraphs 7 through 11 above.

15. After Respondent performed the robotic-assisted laparoscopic radical prostatectomy on Patient A on January 24, 2014, the patient continued to have persistently elevated PSA levels. Additionally, the operative specimen was found to have no cancer, was approximately 9 grams, and was torn. Therefore, it was reasonable for Respondent to have suspected that local disease had been left in situ in the prostate. However, Respondent failed to follow up on this possibility within six weeks with a post-surgical digital rectal examination and/or order radiographic studies such as a CT scan, MRI scan, or sonographic scan. Respondent failed to recognize during his cystoscopic examination postoperatively that there was a bridge of tissue between the urethra membranes and the anastomosis. Respondent's failure to recognize that he had not removed the cancer led to a delay in treatment and such failure is a departure from the standard of care.

16. On or about May 19, 2015, Respondent performed a biopsy on Patient B, a fifty-five-year-old male. Respondent prescribed antibiotics and instructed the patient to take them before the biopsy procedure. The patient was compliant with taking the antibiotics. Post biopsy, the pathology report results demonstrated prostate cancer (Gleason 7 (3 +4)) in Patient B. After consultation, Patient B opted to have radiation therapy wherein Respondent would need to place fiducial seed in the prostate using transrectal ultrasound.

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17. On or about July 14, 2015, Respondent performed the gold prostate marker (seed) placement in Patient B's prostate. Respondent failed to order and/or insure that the patient had taken antibiotics prior to Respondent's performing this procedure on Patient B. Pre-operative antibiotics are usually given on any transrectal surgical procedures to prevent infection. As a result, within 24 hours after Respondent performed the transrectal procedure on Patient B, this patient developed sepsis and was hospitalized for three days. In addition, Patient B was required to take an additional ten days of IV antibiotics at home after discharge from the hospital to continue to treat the sepsis. Respondent's failure to insure Patient B received pre-procedure antibiotics (prophylactically) constitutes a departure from the standard of care. Combining the allegations of paragraphs 15 through 17, Respondent has been repeatedly negligent in his care and treatment of Patients A and B.

**PRAYER**

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Medical Board of California issue a decision:

1. Revoking or suspending Physician's and Surgeon's Certificate Number G 60284, issued to Lionel Sidney Foster, Jr., M.D.;
2. Revoking, suspending or denying approval of Lionel Sidney Foster, Jr., M.D.'s authority to supervise physician assistants and advanced practice nurses;
3. Ordering Lionel Sidney Foster, Jr., M.D., if placed on probation, to pay the Board the costs of probation monitoring; and
4. Taking such other and further action as deemed necessary and proper.

DATED: April 13, 2018

  
KIMBERLY KIRCHMEYER  
Executive Director  
Medical Board of California  
Department of Consumer Affairs  
State of California  
Complainant

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